

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	Facility ID No. 62109
<b>STOCKS BROADCASTING, INC.</b>	)	NAL/Acct. No. MB-200741410043
	)	FRN: 0013143805
Licensee of Station WFHK(AM)	)	File No. BR-20050323AGL
Pell City, Alabama	)	

**FORFEITURE ORDER**

**Adopted: June 7, 2010****Released: June 8, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of five thousand six hundred dollars (\$5,600) to Stocks Broadcasting, Inc. ("Licensee"), licensee of Station WFHK(AM) ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules")<sup>1</sup> and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act") by failing to timely file a license renewal application and engaging in unauthorized operation of the Station.<sup>2</sup>

**II. BACKGROUND**

2. On January 31, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.<sup>3</sup> As noted in the NAL, Licensee's renewal application for the Station's license term was due on December 1, 2003, four months prior to the April 1, 2004 expiration date.<sup>4</sup> On March 23, 2005, Licensee tendered the captioned license renewal application, and on March 29, 2005, requested a special temporary authority (STA) to continue operations pending consideration of the untimely renewal application. The staff granted the STA on April 8, 2005, and it expired on October 8, 2005. The staff granted the renewal application on January 31, 2007.

3. In response to the NAL, Licensee submitted a *pro se* letter along with the Station's profit and loss statements from 2004–06, prepared by the Station's accountant, on March 21, 2007.<sup>5</sup> In the letter, Adam Stocks ("Stocks"), President of the Licensee, states that that forfeiture should be reduced because: (1) it would place financial hardship on both the station and his family; and (2) the Station "is not a 'repeat offender' against the FCC and to [his] knowledge [the Station] has never had a complaint filed against" it.<sup>6</sup>

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<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> *Stocks Broadcasting Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3888 (MB 2007).

<sup>4</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>5</sup> See Letter from Adam Stocks, President, Stocks Broadcasting, Inc., (Mar. 21, 2007) ["Letter"].

<sup>6</sup> *Id.*

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission's *Forfeiture Policy Statement*.<sup>9</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>10</sup>

5. In his letter, Stocks requests that the *NAL* be reduced in light of the financial hardship it would place on his business and family.<sup>11</sup> Stocks states that WFHK (AM) is a small station he co-owns with his wife, and that they would have to take out a loan to repay the fine.<sup>12</sup> He maintains that in six years of Station ownership, the Station's only profitable year was 2006, when the Station made \$2,604.24.<sup>13</sup> Stocks also asks for leniency because the Licensee has no previous FCC violations.<sup>14</sup>

6. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the licensee's current financial status. Any claim of inability to pay must identify the basis for the claim by reference to the financial documentation submitted.<sup>15</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>16</sup> In some cases, other financial indicators such as net losses may also be relevant,<sup>17</sup> but if gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not by itself mean it cannot afford to pay.<sup>18</sup>

7. Here, Stocks provided us with the Station's profit and loss statements prepared by the Station's accountant for 2004, 2005, and 2006, to demonstrate losses for 2004 and 2005 and a profit in 2006.<sup>19</sup> These returns show purported gross revenues of \$181,647.66, \$176,610.30, and \$178,786.15, respectively. The \$7,000 forfeiture in this case represents 3.9 percent of the Station's average gross revenue over the three years for which information was provided. In considering claims of financial

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<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> Letter, *supra* note 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (MB 2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

<sup>16</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> The statements reflect a loss of \$5,671.95 in 2004, a loss of \$18,286.82 in 2005, and a profit of \$2,604.24 in 2006.

hardship, we have found reasonable forfeiture amounts of 4 percent of gross revenue,<sup>20</sup> and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator's gross revenue was not excessive despite claims of financial hardship.<sup>21</sup> A forfeiture of \$7,000 is therefore reasonable in this case.

8. Licensee notes that it has an unblemished record of compliance with the Commission's Rules. Commission records confirm this, and thus we reduce the forfeiture on this basis from \$7,000 to \$5,600.<sup>22</sup>

9. We have considered Licensee's response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>23</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>24</sup> violated Section 301 of the Act.<sup>25</sup> However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$5,600.<sup>26</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>27</sup> that Stocks Broadcasting, Inc. SHALL FORFEIT to the United States the sum of five thousand six hundred dollars (\$5,600) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant

<sup>20</sup> See *Bowie County Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 9539 (MB 2009).

<sup>21</sup> See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

<sup>22</sup> See, e.g., *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (reducing forfeiture amount based on licensee's history of compliance); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128, 1129 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536, 1537 (MB 2009) (same). See also 47 C.F.R. § 1.80 (2008), Note to Paragraph (b)(4), Downward Adjustment Criteria.

<sup>23</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See also *Southern California Broadcasting Co.*, Memorandum and Opinion, 6 FCC Rcd 4387, 4388 (1991) (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>24</sup> Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>25</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>26</sup> See, e.g., *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (reducing forfeiture amount based on licensee's history of compliance); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128, 1129 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536, 1537 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

<sup>27</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

to Section 504(a) of the Act.<sup>28</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>29</sup> Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>30</sup>

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent, by First Class Certified Mail, Return Receipt Requested, to Stocks Broadcasting, Inc., 22 Cogswell Avenue, Pell City, AL 35125.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>28</sup> 47 U.S.C. § 504(a).

<sup>29</sup> See 47 C.F.R. § 1.1914.

<sup>30</sup> *Id.*